IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 552 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YOGESH @ SAMIR KANTIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for the Petitioner.

Mr. K.P.Rawal, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

MR HM PARIKH for Respondent No. 2

MR.HEMANG H PARIKH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 21/12/2004

ORAL JUDGEMENT

Rule. Learned APP Mr. K.P.Rawal waives service of notice of Rule on behalf of respondent no.1 State. Learned advocate Mr. H.M.Parikh waives service of notice of Rule on behalf of respondent no. 2.

2. The present Criminal Revision Application has been preferred against the judgment dated 14th July, 2004 in Criminal Appeal NO. 96 of 2002 passed by the learned Joint District Judge and Additional Sessions Judge, Fast Track Court no. 7, Nadiad, whereby the judgment and order dated 29th November, 2002 in Criminal case no.5479 of 2001 passed by the 2nd Joint Civil Judge (S.D.) and Judicial Magistrate First Class, Nadiad has been confirmed. By the said judgment, the trial court has convicted the applicant-original accused for the offence punishable under section 138 of the Negotiable Instruments Act and has sentenced the applicant to undergo rigorous imprisonment for a period of 6 months and imposed a fine of Rs. 2500/-, in default, to undergo one month's simple imprisonment.

3. In the present case, a cheque for a sum of Rs. 1,25,000/- was issued by the applicant to the respondent no. 2 - original complainant. The said cheque was dishonoured for want of sufficient funds in the bank account of the applicant. A notice as required under Negotiable Instruments Act was given by the complainant to the applicant and thereafter, within the prescribed period, because of non-payment of the said amount, a criminal complaint was filed by the original complainant. After the trial, the trial court has convicted the applicant-original accused and sentenced him to undergo rigorous imprisonment for a period of six months and pay a fine of Rs. 2500/-, in default, to undergo simple imprisonment of one month. In the appeal, the lower appellate court has confirmed the said judgment of the trial court. Hence, the applicant-original accused has filed the present Criminal Revision Application before this Court.

4. It is submitted by the learned counsel for the applicant that this Court, while issuing notice on 10th August, 2004 has observed that as there is a scope for compromise between the parties, the notice is issued and even bail was also granted to the applicant and the sentence was placed under suspension. It is also submitted by the learned counsel for the applicant that now, the dispute between the parties has been settled. A compromise has been arrived at between the applicant and respondent no.2-original complainant. The amount of Rs. 1,05,000/- (Rs. One lac five thousand) has already been

paid to respondent no. 2 as full and final settlement of this complaint. Both the learned counsels have read the compromise arrived at between the parties and the same is produced before this Court. The said compromise/settlement dated 21st December, 2004 is ordered to be taken on record. It bears the signatures of the parties and the learned counsels for the respective parties. The applicant as well as respondent no.2-original complainant are personally present before this Court and they admit the same. On a question, the applicant has stated that he has paid a sum of Rs. 1,05,000/- to the respondent no. 2. Similarly, on a question, the respondent no.2-original complainant has stated that she has received the said amount. The compromise has been entered into willingly and without coercion or undue influence. Learned APP who is also present in the Court has submitted that if the compromise has been arrived at between the parties which is mainly arising due to dishonour of cheque and as it is an offence in personam, he cannot have any objection if the citizens are inter-se settling their disputes.

5. Section 147 of the Negotiable Instruments Act, 1881 reads as under:

"147 : Offences to be compoundable- Notwithstanding anything contained in the Code of Criminal Procedure, (2 of 1974), every offence punishable under this Act shall be compoundable."

This Court in the judgment in the case of Kirpalsingh Pratapsingh vs. Salvinder Kaur Hardipsingh Lobana reported in 2004 (2) GLR, 1211 has observed in para 27 as under:

"27. The country is under the process of and progress towards globalisation. So, the intention of the legislature and object of enacting "Banking Public Financial Institutions and the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 leads this Court to a conclusion that the offence made punishable under section 138 of Negotiable Instrument Act is not only an offence qua property but it is also of the nature of an economic offence, though not covered in the list of statutes enacted in reference to section 468 of Criminal Procedure Code referred to hereinabove. So the parties, in reference to offence under section 138 of Negotiable Instruments Act read with section 147 of the said Act are at liberty to compound the matter at any stage even after the dismissal of the revision application. Even a convict undergoing imprisonment with the liability to pay the amount of fine imposed by the

Court and/or under an obligation to pay the amount of compensation if awarded, as per the scheme of Negotiable Instruments Act can compound the matter. The complainant i.e. person or persons affected can pray to the Court that the accused, on compounding of the offence maybe released by invoking jurisdiction of this Court under section 482 Criminal Procedure Code read with Article 226 of the Constitution of India."

6. In my opinion, the offence committed by the applicant is not an offence against society and it will not have any deterrent effect on the society at large if it is permitted to be compounded in view of the above legal position. I am also satisfied by the compromise/settlement arrived at by the applicant as well as respondent no. 2. Looking to the facts and circumstances of the case, without entering into merits of the case, the judgment and order dated 29th November, 2002 in Criminal case no. 5479 of 2001 passed by the Judicial Magistrate, First Class, Nadiad convicting and sentencing the applicant-original accused which was confirmed by the Joint District Judge and Additional Sessions Judge, Fast Track Court no. 7, Nadiad in Criminal Appeal No. 96 of 2002 dated 14-7-2004. Both these judgments of the Courts below are hereby set aside. The applicant-original accused is hereby acquitted from the accusation of the charges levelled against him for the offence punishable under section 138 of Negotiable Instruments Act in Criminal Case No. 5479 of 2001 before the Court of learned Judicial Magistrate, First Class, Nadiad. Rule made absolute accordingly.

(D.N.Patel,J)

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